

7.8 EXCAVATIONS AND PLACEMENT OF FILL (EARTHWORKS)

7.8.1 BACKGROUND

- (1) Section 9(3) of the Resource Management Act 1991 (RMA) includes the following "uses" (by reference to the definition in Section 2 of "use") in relation to land that require resource consent approval, unless provided for in the District Plan or as an existing use:

(Section 2(a) RMA)

[(a)(ii) drill, excavate or tunnel land or disturb land in a similar way:]

[(a)(iv) deposit a substance in, on or under land].

- (2) Many land use activities involve excavation and placement of deposits in the form of fill on land. In most circumstances such activities are considered to constitute part of the operation of the use. Where the use concerned is permitted as of right, the various activities involving excavations/filling are seen as part of that operation and are likewise permitted as of right (eg putting metal on farm races, establishing silage pits, land cultivation and "hump and hollow" formation, wintering pads). Other situations (eg road works) would normally require resource consent, except where the work is provided for within the road reserve, and any aspects of concern regarding the works can be addressed through that process.
- (3) The management of the principal effects (eg soil erosion, water quality control) of some earthworks are primarily the responsibility of the Waikato Regional Council.
- (4) Particularly in an urban context, the management of excavations and fills on land is generally handled through either:
- (a) other legislation, in particular the Building Act 2004 in terms of which site works (including earthworks) require approval by Council as part of the building consent;
 - (b) the subdivision of land procedures under the Resource Management Act 1991 (eg conditions of subdivision consent relating to filling, compaction, protection against erosion) and the requirement that a completion certificate confirm the works have been undertaken in conformity with such conditions.
- (5) It should also be recognised that excavations or fills on one property may affect the adjoining property (eg a fence might fall over, trees die etc). So long as such activities fall within the general scope of an activity permitted on the land, any such disputes are to be treated as civil matters. However, should an excavation/fill - in say a residential area - relate mainly to an off-site business which is not a permitted activity in the area, control in the Resource Management Act 1991 is available (abatement notice, enforcement order etc).
- (6) On occasions surplus cut material from road works needs to be disposed of. Such material normally comprises clean topsoil/subsoil and is valued by farmers to fill gullies, depressions etc. The disposal of limited volumes of such material is not considered by the Council to require land use consent (however resource consents from the Regional Council may be required).

- (7) There are, however, excavations and fill placements which are of concern to Council and which are best managed through the District Plan. These fall essentially into three categories:
- (a) Where excavations cease to be minor works which are part and parcel of the principal land use (generally farming) and effectively become an extractive industry.
 - (b) Where imported spoil of various sorts is being used to fill gullies/depressions etc where this is not provided for as a refuse landfill.
 - (c) Excavation and fill not undertaken as part of another consented activity.
- (8) In addition Council is concerned about:
- (a) fill in the Flood Ponding Zone (and associated areas that are subject to inundation), floodways and identified overland flow paths;
 - (b) knowing where fill sites are located to ensure future building development is undertaken appropriately;
 - (c) earthworks within Outstanding Natural Landscape Areas and District Amenity Landscapes;
 - (d) the adverse effects (noise, visual, dust, length of time, traffic etc) associated with the excavation and placement of fill.
- (9) A distinction can be drawn between undertaking excavations and placing of fill which is sourced from within the same property, as against importing large amounts of fill from another area. The former is likely to be part of a normal farming operation and no management by Council is considered necessary.

7.8.2 RESOURCE MANAGEMENT ISSUES

- (1) The nature, location and scale of earthworks can have significant adverse visual and traffic effects, and adversely affect vegetative cover, the soil profile, the nature of stormwater runoff, downstream water quality and the suitability of the land for future development.

7.8.3 OBJECTIVES AND POLICIES

(1) OBJECTIVE 1

To ensure site earthworks associated with land use and subdivision activities avoid, remedy or mitigate adverse visual effects and off-site effects.

(a) Policies

Objective 1 will be achieved by the implementation of the following policies:

- (i) Recognise that excavations and fills are undertaken as part of legitimate land use activities.
- (ii) Differentiate between accessory on-site earthworks, and excavations involving significant movement of material off the site.
- (iii) Ensure that only clean imported fill is placed on sites.

- (iv) Limit the scale and location of earthworks to: minimise the risk of instability and damage to other properties, network utilities and the environment; not increase the risk of potential flooding or reduce the function of ponding areas, overland flow paths, and spillways; minimise amenity and public safety impacts.
- (v) Limit the scale and location of earthworks to avoid, remedy or mitigate adverse visual effects, particularly in sensitive zones and in areas of outstanding and high amenity and/or natural character values.

(b) Reasons

- (i) Many excavations and fills are managed through land subdivision consent procedures. There is no need for any further management of these activities. Excavations and fills in the Rural Zone are often undertaken as part of legitimate land use activities and Council does not consider there is any need for management other than where volumes of material are being transported from one property to another and the excavations have become, in effect, a mine.
- (ii) The provisions of the Building Act 2004 with respect to earthworks have limited scope to address the wider issues that may arise from earthworks (eg transport of material, amenity impacts, flood management control). Accordingly, the scale of earthworks permitted has been set at a level that allows for reasonable earthworks associated with permitted activities in each of the zones.
- (iii) Some excavations/fills will require authorisations from the Waikato Regional Council to address other potential effects (such as erosion and water quality) notwithstanding that no land use consent is required under the District Plan.
- (iv) In Rural zones the disposal of surplus clean fill from roadworks is a matter of negotiation between landowner and roading authority. Council is to be informed where larger volumes of clean material are involved.

7.8.4 ENVIRONMENTAL RESULTS

- (1) To ensure Council is fully informed regarding the placement of significant volumes of imported fill and is able to manage the placement of fill which does not comprise clean topsoil/subsoil and demolition rubble.
- (2) The effects of the placement of significant volumes of fill will be managed to ensure the amenities of the area concerned and future building activity is not compromised.
- (3) To ensure adverse effects of the excavations and fill are minimised.

7.8.5 ACTIVITY STATUS

Earthworks (excavation and/or fill) either as:

- an accessory component of a *Permitted, Controlled, Restricted Discretionary, Discretionary or Non Complying activity*; or

- as a separate *earthwork* activity,

are *Permitted, Controlled, Restricted Discretionary, Discretionary, Non Complying or Prohibited* according to the Activity Status Table below:

Note: Some excavations and placements of fill will also be controlled by the Waikato Regional Plan; this should be referred to, to determine if any authorisations are required.

7.8.5.1 PERMITTED ACTIVITIES

Those activities listed below are a *Permitted Activity*, unless otherwise specified in Rule 8.2A.1.3(3) and subject to compliance with the:

- Conservation and Heritage provisions in Section 6.0;
- Specific and District Wide provisions in Section 7.0;
- District Wide Performance Standards in Section 8.0.

Note: *Earthworks* should be undertaken in general accordance with the Waikato Regional Council's guidelines that are in place at the time that the works are undertaken. The current (2018) guidelines are: "Erosion and sediment control: guidelines for soil disturbing activities", Report: TR 2009/02, excluding "Section 3.4 Hay Bale Barrier" (these are no longer considered suitable control devices), and as amended by the following fact sheets:

- 3. Sediment Control Practices;
- 3.1 Sediment Retention Pond;
- 3.2 Silt Fence; and
- 3.6 Decanting Earth Bund.

For updated guidelines see: <https://www.waikatoregion.govt.nz>

Note: Prior to commencement of *earthworks*, building consent must be obtained for retaining walls that have a surcharge. (A surcharge is an additional load on the land, such as a car park or driveway, a slope or a building.)

Note: *Earthworks* must comply with the land disturbance rules in the Waikato Regional Plan or resource consent must be obtained from the Waikato Regional Council.

Note: Permitted Activity status for *earthworks* is subject to compliance with the conservation and heritage provisions in Section 6 of the District Plan, and may alter the activity status.

Note: The location of underground infrastructure should be identified prior to works commencing to ensure that infrastructure is not accidentally dug into and to avoid serious injury or a costly service interruption. Information on the location of underground pipes and cables can be obtained through the "Dial Before You Dig" service found online at <http://www.beforeudig.co.nz>

(1) ALL ZONES OTHER THAN:

- **CONSERVATION (INDIGENOUS FOREST);**
- **CONSERVATION (WETLAND);**
- **FLOOD PONDING.**

P1 *EARTHWORKS* PROPOSED AND APPROVED AS PART OF A BUILDING CONSENT APPLICATION, UP TO AND EQUAL TO THE SPECIFICATIONS FOR THE RELEVANT ZONE SET OUT IN P3 to P9 BELOW.

P2 EARTHWORKS NECESSARY FOR THE ESTABLISHMENT, OPERATION AND MAINTENANCE OF ANY ROAD OR NETWORK UTILITY PROVIDED FOR AS EITHER A PERMITTED OR CONTROLLED ACTIVITY IN SECTION 7.4

(2) RURAL ZONE (OUTSIDE OUTSTANDING NATURAL LANDSCAPE AREA AND DISTRICT AMENITY LANDSCAPE AREA, FLOODWAYS, OVERLAND FLOW PATHS, SPILLWAYS & PIAKO FLOOD PONDING AREA)

P3 EXCAVATION AND MOVEMENT OF UP TO 4000M³ OF MINERALS AND/OR CLEANFILL (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 ABOVE) FOR END USE ON THE HOLDING OF SOURCE IN ANY 12 MONTH PERIOD

(a) where Council is informed of the fill action before more than 500m³ is proposed to be relocated.

(b) details are to be provided to the Council, where the fill action exceeds 500m³ and/or the depth of fill exceeds 0.5 metres at any point, within one month following the placement of fill, as follows:

- (i) legal description of property;
- (ii) nature and source of fill;
- (iii) location of fill on site;
- (iv) depth of fill;
- (v) compaction of fill.

Note: Compliance is also required with the activity specific standard for land 'subject to inundation' in the Rural Zone rules, where the land is identified on the planning maps as 'subject to inundation', and may alter the activity status.

P4 IMPORTING UP TO 2000M³ OF CLEANFILL (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 ABOVE) COMPRISING TOPSOIL, SUBSOIL, CUT MATERIAL FROM ROADWORKS AND/OR DEMOLITION RUBBLE ONTO A HOLDING IN ANY 12 MONTH PERIOD

(a) where Council is informed of the fill action before the activity is carried out (required where more than 500m³ is proposed to be imported).

(b) details are to be provided to the Council, where the depth of fill exceeds 0.5 metres at any point, within 1 month following the placement of fill, as follows:

- (i) legal description of property;
- (ii) nature and source of fill;
- (iii) location of fill on site;
- (iv) depth of fill;
- (v) compaction of fill.

Note: Compliance is also required with the activity specific standard for land 'subject to inundation' in the Rural Zone rules, where the land is identified on the planning maps as 'subject to inundation', and may alter the activity status.

(3) RURAL ZONE (WITHIN DISTRICT AMENITY LANDSCAPE AREA)

P5 EXCAVATION AND MOVEMENT OF UP TO 2000M³ OF MINERALS AND/OR CLEANFILL (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 FOR END USE ON THE HOLDING OF SOURCE IN ANY 12 MONTH PERIOD

<p>(a) where <i>Council</i> is informed of the fill action before it is carried out (required where more than 500m³ is proposed to be relocated).</p> <p>(b) details are to be provided to the <i>Council</i>, where the depth of fill exceeds 0.5 metres at any point, within one month following the placement of fill, as follows:</p> <ul style="list-style-type: none"> (i) legal description of property; (ii) nature and source of fill; (iii) location of fill on <i>site</i>; (iv) depth of fill; (v) compaction of fill. <p>Note: Compliance is also required with the activity specific standard for land '<i>subject to inundation</i>' in the Rural Zone <i>rules</i>, where the land is identified on the planning maps as '<i>subject to inundation</i>', and may alter the activity status.</p>
<p>P6 IMPORTING UP TO 2000M³ OF <i>CLEANFILL</i> (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 ABOVE) COMPRISING TOPSOIL, SUBSOIL, CUT MATERIAL FROM ROADWORKS AND/OR DEMOLITION RUBBLE ONTO A <i>HOLDING</i> IN ANY 12 MONTH PERIOD</p> <p>(a) where <i>Council</i> is informed of the fill action before the activity is carried out (required where more than 500m³ is proposed to be imported).</p> <p>(b) details are to be provided to the <i>Council</i>, where the depth of fill exceeds 0.5 metres at any point, within 1 month following the placement of fill, as follows:</p> <ul style="list-style-type: none"> (i) legal description of property; (ii) nature and source of fill; (iii) location of fill on <i>site</i>; (iv) depth of fill; (v) compaction of fill. <p>Note: Compliance is also required with the activity specific standard for land '<i>subject to inundation</i>' in the Rural Zone <i>rules</i>, where the land is identified on the planning maps as '<i>subject to inundation</i>', and may alter the activity status.</p>

(4) RURAL ZONE (WITHIN OUTSTANDING NATURAL LANDSCAPE AREA)

<p>P7 EXCAVATION AND MOVEMENT OF UP TO 1000M³ OF <i>MINERALS</i> AND/OR <i>CLEANFILL</i> (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 FOR END USE ON THE <i>HOLDING</i> OF SOURCE IN ANY 12 MONTH PERIOD</p> <p>(a) where <i>Council</i> is informed of the fill action before it is carried out (required where more than 500m³ is proposed to be relocated).</p> <p>(b) details are to be provided to the <i>Council</i>, where the depth of fill exceeds 0.5 metres at any point, within one month following the placement of fill, as follows:</p> <ul style="list-style-type: none"> (i) legal description of property; (ii) nature and source of fill; (iii) location of fill on <i>site</i>; (iv) depth of fill; (v) compaction of fill.

Note: Compliance is also required with the activity specific standard for land '*subject to inundation*' in the Rural Zone rules, where the land is identified on the planning maps as '*subject to inundation*', and may alter the activity status.

- P8** IMPORTING UP TO 2000M³ OF *CLEANFILL* (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 ABOVE) COMPRISING TOPSOIL, SUBSOIL, CUT MATERIAL FROM ROADWORKS AND/OR DEMOLITION RUBBLE ONTO A *HOLDING* IN ANY 12 MONTH PERIOD
- (a) where *Council* is informed of the fill action before the activity is carried out (required where more than 500m³ is proposed to be imported).
- (b) details are to be provided to the *Council*, where the depth of fill exceeds 0.5 metres at any point, within 1 month following the placement of fill, as follows:
- (i) legal description of property;
 - (ii) nature and source of fill;
 - (iii) location of fill on *site*;
 - (iv) depth of fill;
 - (v) compaction of fill.

Note: Compliance is also required with the activity specific standard for land '*subject to inundation*' in the Rural Zone rules, where the land is identified on the planning maps as '*subject to inundation*', and may alter the activity status.

(5) **COASTAL, KARANGHAKE GORGE, RESERVE (PASSIVE) AND RESERVE (ACTIVE) ZONES**

- P9** *EARTHWORKS* (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 ABOVE), SUBJECT TO:
- (a) the maximum area of the excavation not exceeding 300m²;
 - (b) the maximum volume of the excavation not exceeding 80m³;
 - (c) the maximum depth of the excavation not exceeding 0.5 metres;
 - (d) the maximum volume of *cleanfill* (comprising topsoil, subsoil and any demolition rubble) on a *site* not exceeding 100m³. The *Council* must be informed of the fill action (where exceeding 30m³) before the activity is carried out and the following details are to be provided to the *Council* within 1 month following the placement of the *cleanfill*:
 - (i) legal description and street address of the property;
 - (ii) nature and source of fill;
 - (iii) location of fill on *site*;
 - (iv) depth of fill;
 - (v) compaction of fill.
 - (e) No placement of *cleanfill* provided for under (d) above shall be placed in an *overland flow path* or *ponding area*.
 - (f) *earthworks* shall not change the natural run-off or drainage patterns in a way that causes more than minor adverse effects on land in different ownership.
 - (g) No *earthworks* shall be undertaken on any part of the *site* that has a slope $\geq 18^\circ$
 - (h) All bare earth areas, including excavation and fill batter faces, are to be revegetated within 6 months of the *earthworks* being completed.

Note: Compliance is also required with the activity specific standard for land '*subject to inundation*' in the relevant *zone rules*, where the land is identified on the planning maps as '*subject to inundation*', and may alter the activity status.

(5A) RESIDENTIAL, LOW DENSITY RESIDENTIAL, MARAE DEVELOPMENT, TOWNSHIP, TOWN CENTRE, AND INDUSTRIAL ZONES

P9A *EARTHWORKS* (NOT OTHERWISE PROVIDED FOR IN P1 TO P2 ABOVE), SUBJECT TO:

- (a) the maximum area of the *earthworks* not exceeding 500m²;
- (b) the maximum volume of the *earthworks* not exceeding 200m³;
- (c) the maximum excavation not exceeding a depth of 1.5 metres;
- (d) the maximum placement of *cleanfill* not exceeding a height of 0.5 metres where located within a *front yard* or *other yard*;
- (e) the maximum placement of *cleanfill* not exceeding a height of 1.5 metres where located outside of a *front yard* or *other yard*;
- (f) the *Council* must be informed of the fill action (where exceeding 30m³) before the activity is carried out and the following details are to be provided to the *Council* within 1 month following the placement of the *cleanfill*:
 - (i) legal description and street address of the property;
 - (ii) nature and source of fill;
 - (iii) location of fill on *site*;
 - (iv) depth of fill;
 - (v) compaction of fill.
- (g) no placement of *cleanfill* provided for under (d) - (f) above shall be placed in an *overland flow path* or *ponding area*.
- (h) *earthworks* shall not change the natural run-off or drainage patterns in a way that causes more than minor adverse effects on land in different ownership
- (i) no *earthworks* shall be undertaken on any part of the *site* that has a slope $\geq 18^\circ$
- (j) all bare earth areas, including excavation and fill batter faces, are to be revegetated within 6 months of the *earthworks* being completed.

Note: Compliance is also required with the activity specific standard for land '*subject to inundation*' in the relevant *zone rules*, where the land is identified on the planning maps as '*subject to inundation*', and may alter the activity status.

(6) CONSERVATION (INDIGENOUS FOREST) AND CONSERVATION (WETLAND) ZONES

P10 *EARTHWORKS* ASSOCIATED WITH *PERMITTED ACTIVITIES* LISTED IN THE *ZONE RULES* 5.2.4.1 AND 5.3.4.1

7.8.5.2 CONTROLLED ACTIVITIES

Those activities listed below are a *Controlled Activity*.

THERE ARE NO *CONTROLLED ACTIVITIES*

7.8.5.3 RESTRICTED DISCRETIONARY ACTIVITIES

Those activities listed below are a *Restricted Discretionary Activity*.

RD1 EARTHWORKS SPECIFIED AS A *RESTRICTED DISCRETIONARY ACTIVITY* IN RULE 8.2A.1.3 (3)(b).
Matters over which the Council has restricted its discretion are listed in 8.2A.1.4(1)(b).

7.8.5.4 DISCRETIONARY ACTIVITIES

Those activities listed below are a *Discretionary Activity* and shall be assessed against the relevant criteria in Rule 7.8.6.

D1 ANY EARTHWORKS NOT OTHERWISE PROVIDED FOR AS A *PERMITTED ACTIVITY*, EXCEPT IN THE CONSERVATION (WETLAND) AND FLOOD PONDING ZONE.

7.8.5.5 NON COMPLYING ACTIVITIES

Those activities listed below are a *Non Complying Activity*.

NC1 ANY EARTHWORKS NOT PROVIDED FOR AS A *PERMITTED, CONTROLLED, RESTRICTED DISCRETIONARY, DISCRETIONARY OR PROHIBITED ACTIVITY*.

7.8.5.6 PROHIBITED ACTIVITIES

Those activities listed below are a *Prohibited Activity*.

PR1 EARTHWORKS IN THE CONSERVATION (WETLAND) ZONE, NOT OTHERWISE PROVIDED FOR AS A *PERMITTED ACTIVITY*.

7.8.6 ASSESSMENT CRITERIA FOR DISCRETIONARY ACTIVITIES

- (1) When assessing any application for a *Discretionary Activity*, Council shall have regard to the relevant *Earthworks* objectives and policies, the relevant assessment criteria listed below and any other matters it considers appropriate:
- (a) The degree of slope and the extent of *earthworks*.
 - (b) The extent to which the *earthworks* will change the *ground level* of the *site*.
 - (c) The degree to which the finished ground levels reflect the contour of the development *site* and the adjoining sites.
 - (d) The degree to which the *earthworks* will enable additional built form, scale and massing below *ground level* and the effect this has on the surrounding character and *amenity values*.
 - (e) The effects on landscape, heritage and biodiversity values and in particular effects on features and areas identified in Section 6 of the District Plan, and the landscape and natural character values of the Coastal and Karangahake Gorge Zones and Outstanding Natural Landscape Areas and District Amenity Landscape Areas.

- (f) The effect on sensitive receivers from additional noise and dust associated with the *earthworks*.
- (g) The time period, hours of the day and days of the week over which the excavation and fill will be undertaken.
- (h) The extent to which the movement of soil or *cleanfill* material to and from the *site* may affect the *roads* to be travelled and the *amenity* of residents along the transportation route.
- (i) The time period over which the soil will be exposed.
- (j) The extent of modification or barriers to natural drainage and flood control systems, including *ponding areas*, *overland flowpaths*, and spillways.
- (k) The methods to control sediment runoff.
- (l) The stability of any cut or fill and the method to achieve stability.
- (m) The nature of the fill to be used.